

1 information he knows about -- as a layman, as to what this
2 kind of property is going for in that area, if you know. I'm
3 not sure I see what the relevance of it is because everything
4 that was -- whatever interest he had was cut off in July of
5 1992. You're asking the values in 1982?

6 MR. McCARTIN: The sole question and it's the only
7 question I have on this area is since 1985, have the land
8 prices in the Sierra Vista area gone up, down, or remained
9 approximately the same?

10 WITNESS: They've doubled.

11 BY MR. McCARTIN:

12 Q Now, you've mentioned in your answer to that last
13 question that you planted certain trees and I believe that was
14 in connection with the easement that was granted by the
15 government -- by you to the government. Would you please
16 describe -- because I was a little unclear before -- exactly
17 what the terms of this easement were?

18 A Well, the terms of the easement, Number One and
19 primary, was to not build any additional residences or
20 buildings of any nature on the property, to plant, maintain,
21 water, and grow 150 Arizona cyprus trees along the northern
22 border of my property to block the view of the homes so they
23 could not been seen as visitors would visit the National Park
24 and drive by my property to get to the main visitor's center.

25 Q Mr. Richards, do you have in front of you a copy of

1 Mass Media Bureau Exhibit Four?

2 A Yes, I do.

3 Q Did you have a chance to examine this document over
4 lunch today?

5 A Yes, I did.

6 Q Can you determine -- were you able to determine
7 approximately when that document was prepared?

8 A Well, I think it was prepared somewhere in the late
9 70's, early 80's -- '77 to '80 period.

10 Q And what was the purpose of the document?

11 A I think the purpose of this document was to clarify
12 between my cousin Terry and myself as to how much money was
13 owed to him, what I had paid to him, and what I determined to
14 be the different types of marijuana.

15 Q Mr. Richards, was it your habit to purchase
16 marijuana in large quantities such as reflected in Item Four
17 of Mass Media Bureau Exhibit Four?

18 JUDGE SIPPEL: That's really a leading question.
19 Your answer suggests -- your question suggests an answer.

20 MR. McCARTIN: May I rephrase it?

21 JUDGE SIPPEL: You can try.

22 BY MR. McCARTIN:

23 Q In what quantities -- was -- did you have a habit as
24 to the amount of marijuana you would buy at a particular time?

25 JUDGE SIPPEL: You're really asking what it a

1 practice -- did he have a practice as opposed to a habit. I
2 think he had a habit back then.

3 MR. McCARTIN: That's a poor choice of words, Your
4 Honor. Thank you.

5 JUDGE SIPPEL: What was your practice with respect
6 to quantities in general?

7 WITNESS: Well, I would always buy -- if the
8 marijuana was good. Now, this is all based on if it was good.
9 If it was not good, of course, I wouldn't buy it because it's
10 for my personal use, so therefore, I only want the best.

11 JUDGE SIPPEL: Don't make the story too seamy now.

12 WITNESS: Well, I would buy all I could -- if there
13 was ten pounds, twelve pounds, thirteen pounds, six pounds,
14 whatever it would be, I would buy it all if it was of the
15 quality that I wanted.

16 BY MR. McCARTIN:

17 Q Why is that?

18 A Well, because the quality that I was used to smoking
19 didn't come along very often, so you had to buy it and pay for
20 it or it was gone.

21 Q Let me refer you, again, to Mass Media Bureau
22 Exhibit Four and Item Number Six about which you testified in
23 response to Mr. Zauner's questions and it reads -- as I
24 recall, you testified, "1 1/4 pounds, green loose that was in
25 trunk after I left w/6,300."

1 A What does that mean to me?

2 Q Well, let me ask the question. Do you see -- do you
3 have in mind where I'm --

4 A Yes. I put my finger on it.

5 Q What does that entry mean?

6 A Well, that means to me that there was 1 1/4 pounds
7 of green loose which would've been a lower quality that was in
8 my trunk after I left it there and it was encompassed in this
9 6,300 -- it was with this \$6,300 that's also on Exhibit Five,
10 part of the \$7,000 total and part of Number Four, when it says
11 paid 6,300. So it was -- it was a pound and a quarter of
12 green loose that was in the trunk that I left in the trunk and
13 it was part of the 6,300 that I already had paid and to the
14 right, there was \$700 due.

15 Q Now, let me move to another topic. When did you
16 first grow -- excuse me.

17 JUDGE SIPPEL: Go off the record a minute.

18 (Off the record.)

19 (On the record.)

20 MR. McCARTIN: Your Honor, I may have missed an
21 answer to a question. But just to make sure that I didn't,
22 I'd like to ask it again, and if I did, I beg your indulgence.

23 BY MR. McCARTIN:

24 Q Again, referring to Mass Media Bureau Exhibit Four,
25 why did you keep that record?

1 A Why was the record established?

2 Q Yes.

3 A Well, to keep a clarity between my cousin and I as
4 to what I owed him and what he gave me.

5 Q Thank you. Now, let me move on. When did you first
6 grow marijuana on the National Park adjacent to your ranch?

7 A The summer of 1991.

8 Q And why did you grow the marijuana there for the
9 first time at that point?

10 A Well, I grew it there so I wouldn't subject the
11 property to be lost in case anything ever happened and I grew
12 it in that volume to supply my needs because the price of
13 marijuana had more than doubled and tripled from my older
14 purchases in prior years.

15 Q You also testified in response to questions from Mr.
16 Zauner about approximately a hundred marijuana plants that you
17 pulled up from your own property. Do you recall that
18 testimony?

19 A Yes.

20 Q Did you plant that marijuana on your property?

21 A The hundred plants? No.

22 Q Do you know how the marijuana grew -- came to grow
23 on your property?

24 A My opinion? How I --

25 Q Do you know?

1 A Well, in 1988, the D.E.A. had me work with them on a
2 group of Mexicans who were smuggling over 550 pounds of
3 commercial, seeded sativa, marijuana, and it was stored in
4 this area until the D.E.A. came and picked it up and took it
5 to Tucson and arrested the individuals who were responsible.

6 Q What connection does that have to the -- how that
7 marijuana came to grow in that place?

8 A Well, there was 20-some bails of wrapped in plastic
9 bags that were in the process of them smuggling, going through
10 the brush, and things ripped open and my only thought is, is
11 that this seed fell out of there when it was being unloaded
12 and stashed and put in a pile and put a tarp over the top of
13 it and then that stood there for -- until I was farming close
14 to it and the water then, from the sprinklers, went over and
15 wetted it and it started to grow.

16 Q Why then did you pull these plants up and take them
17 away?

18 A Well, Number One, I was leaving to go to Chicago. I
19 didn't want to take a chance. I didn't know what the origin
20 --

21 JUDGE SIPPEL: Chance on what?

22 WITNESS: Of losing the property by not being there
23 and then having this stuff growing and then taking the chance
24 that somebody may find it and then I would be subject to
25 losing my property as a result of it growing on the property.

1 Plus I didn't know whether it was sativa or indica and I
2 wasn't interested in anything but indica. So it would be just
3 a -- kind of a waste of time to be taking the liability and
4 then you don't even know what you've got.

5 BY MR. McCARTIN:

6 Q What type of marijuana did you grow on the Park land
7 next to your property?

8 A Indica.

9 Q How do you spell that?

10 A I-N-D-I-C-A.

11 JUDGE SIPPEL: And what was the lesser?

12 WITNESS: Sativa.

13 JUDGE SIPPEL: How do you spell that?

14 WITNESS: S-A-T-I-V-A.

15 MR. McCARTIN: Your Honor, if I could have a moment
16 to consult my notes, I believe I'm done.

17 JUDGE SIPPEL: All right. While you're doing that,
18 I'm going to let you go last Mr. Zauner on this. I want to
19 just clarify one thing in my own mind -- or two things. With
20 respect to this batch of marijuana that you ultimately took up
21 and threw away, when did you first notice it growing?

22 WITNESS: Probably about July 1st.

23 JUDGE SIPPEL: Of what year?

24 WITNESS: 1991.

25 JUDGE SIPPEL: And when did you pull it up?

1 WITNESS: July 4th.

2 JUDGE SIPPEL: How tall was it when you pulled it
3 up?

4 WITNESS: (Witness indicates length with hands.)

5 JUDGE SIPPEL: You're holding your hands up about a
6 foot.

7 WITNESS: Well, some were as high as ten inches,
8 ten, twelve and some was five, six.

9 JUDGE SIPPEL: From six to twelve inches.

10 WITNESS: It was all grouped in together in a close
11 area, so I mean, they were all just like this.

12 JUDGE SIPPEL: I see what your hands are showing me,
13 that they were close together. But the point is, is that you
14 earlier had described in your testimony that the size of the
15 area was approximately the size of this space here in the
16 courtroom. That's what you first testified to this morning.

17 WITNESS: Well, that's the area where they were,
18 yes.

19 JUDGE SIPPEL: That's the area that they were. Was
20 that whole area filled up with it?

21 WITNESS: Oh, no, no. I mean, solid like this? No.
22 No, there was -- I didn't count them.

23 JUDGE SIPPEL: Give me square feet. How many square
24 feet of this was growing? What by what? Five feet by five
25 feet?

1 WITNESS: Six by six.

2 JUDGE SIPPEL: Six by six?

3 WITNESS: Six by eight.

4 JUDGE SIPPEL: Six by eight?

5 WITNESS: Somewhere around there.

6 JUDGE SIPPEL: All right, six by eight -- a six by
7 eight plot and --

8 WITNESS: Some here, some there, some here, some
9 there. In other words, it's wherever this seed had dropped,
10 it then came up in that area.

11 JUDGE SIPPEL: That's your spec--

12 WITNESS: It wasn't tight. But it was tight in
13 clumps.

14 JUDGE SIPPEL: But in the individual clumps, it was
15 tight.

16 WITNESS: Yes.

17 JUDGE SIPPEL: But -- so you had about -- could you
18 estimate how many tight clumps did you have in this general
19 area? Twenty tight clumps? Ten tight clumps?

20 WITNESS: I'd say maybe ten.

21 JUDGE SIPPEL: Maybe ten, maybe fifteen, something
22 like that. Ten, twelve.

23 WITNESS: Give or take ten.

24 JUDGE SIPPEL: Give or take ten, okay. You've got
25 ten tight clumps in an area of about six by eight square feet,

1 right?

2 WITNESS: Yes.

3 JUDGE SIPPEL: I mean, this is your best estimate.

4 And the height was from six inches to twelve inches.

5 WITNESS: Correct.

6 JUDGE SIPPEL: Now, how long did it take to grow to
7 the twelve-inch height?

8 WITNESS: I don't know. I only noticed it on July
9 first.

10 JUDGE SIPPEL: I know, but you've established
11 yourself pretty much as kind of the expert.

12 WITNESS: How long did -- well, I would say --

13 JUDGE SIPPEL: How much -- how much time does it
14 take to get up to a foot?

15 WITNESS: From seed to that, about three weeks.

16 JUDGE SIPPEL: Three weeks?

17 WITNESS: Yeah.

18 JUDGE SIPPEL: And you discovered it, you said, on
19 the first and you tore it out on the fourth.

20 WITNESS: Correct.

21 JUDGE SIPPEL: So three days. What were you
22 thinking about over that three-day period with respect to that
23 patch of marijuana?

24 WITNESS: I was thinking what to do with it.

25 JUDGE SIPPEL: You didn't quite know what to do with

1 it.

2 WITNESS: Yeah. I didn't know what -- you know,
3 whether I should just cut it down. But then I thought if I
4 just cut it down, this stuff is going to come back and I
5 thought of just going out there and breaking it off, you know,
6 or trying to pull it out and I thought, well, if I leave some
7 roots in there, then maybe this thing's going to come back.

8 So what we did is go down there with a shovel. I
9 had the assistance of a friend of mine. We went down there
10 with a shovel and dug it and cut the roots off and took dirt
11 and root, the whole thing so that we would get everything, and
12 dug up the whole area and pulled everything out and put it in
13 my van and drove it about 40-some miles to the San Pedro River
14 and dumped it over the bridge into the river.

15 JUDGE SIPPEL: And had you formulated an opinion at
16 that time that this marijuana was the result of what was being
17 illegally transported by this group that you testified to
18 earlier, the Mexican group?

19 WITNESS: Well, that's the only conclusion I could
20 come up with.

21 JUDGE SIPPEL: Well, when did you -- yeah, I know
22 that. But when did you come up with that conclusion?

23 WITNESS: Well, right after the arrest and then the
24 whole thing came out and I read everybody's deposition and
25 then I was asked questions about it and I tried to piece it

1 together as to when and what --

2 JUDGE SIPPEL: And what was the date of your arrest?

3 WITNESS: July 25th.

4 JUDGE SIPPEL: So then what -- you hadn't formed any
5 opinion between July first and July fourth as to how that got
6 there?

7 WITNESS: No. Well, my dad was dying and I was
8 running around, not only just concerned with that marijuana,
9 but I had -- I had to take care of watering, I had to allocate
10 people to continue harvest crops, I had to do a lot of things
11 so that I could be free to go. So I mean, I had too many
12 other things on my mind. I just wanted to get it over with
13 and get it out of there and rest in my mind, assured that I'm
14 not leaving, jeopardizing my property.

15 JUDGE SIPPEL: And were you -- what was the period
16 of time that you were working with the D.E.A. with respect to
17 that operation you testified to?

18 WITNESS: 1988 and '89.

19 JUDGE SIPPEL: And did it terminate -- did that --
20 was that operation -- I'll call that an operation. Was that
21 operation over in 1989 insofar as you were working with the
22 D.E.A. on that project?

23 WITNESS: Actually, I -- yeah, it was -- you know,
24 it happened and it was over with within a couple of days.

25 JUDGE SIPPEL: And that group --

1 WITNESS: And I think it was around 1989.

2 JUDGE SIPPEL: It was over when that group was
3 captured?

4 WITNESS: Yes.

5 JUDGE SIPPEL: If they were captured in 1989, how
6 did the -- and you say that it takes maybe three weeks for it
7 to grow a foot. How did the -- what is your explanation as to
8 how the seedlings got on there three weeks prior to July 1,
9 1991? Because the banditos had already been captured.

10 WITNESS: Oh, okay. How did this happen? How did
11 it come about? Well, in the process of farming on the ranch,
12 the Montezuma Ranch, I was clearing ground to farm these
13 carrots and so I cleared ground and abutted up about twenty
14 feet away from what we call the range land. Just natural
15 grasses. So I was farming carrots within twenty feet of where
16 this pile had been put by these Mexicans.

17 And then we have a lot of windy conditions. So
18 while I was irrigating the carrots and the winds came from
19 different directions, the spray would go twenty, thirty, fifty
20 feet in one direction and then if the wind blew the other way
21 the next day, it would go the other way. So in the process
22 there of planting the carrots and the garlic in a new area and
23 setting up that new area for irrigation, the water went
24 further over and sprouted those seeds and they came up.

25 JUDGE SIPPEL: All right. I understand your

1 explanation with respect to the water getting to the seeds.
2 But what I don't understand is how, if the group of Mexican
3 smugglers had been apprehended by the D.E.A. sometime around
4 1989 and you say that it takes but three weeks to grow these
5 from seedlings to a foot high, how can you be -- how can there
6 be an assurance --

7 WITNESS: There's no water --

8 JUDGE SIPPEL: -- that it was the Mexicans that put
9 the seedlings there? Because they were in jail --

10 WITNESS: Well, they didn't put the seedlings there.
11 All that happened was, in my theory, was that the seeds fell
12 out of the twenty-some bales that the Mexican smugglers had
13 brought over, put in a pile, and put a tarp over it in '89.

14 JUDGE SIPPEL: Are you sure that's the location that
15 they had deposited it?

16 WITNESS: Oh, yeah. It was right in that area
17 exactly.

18 JUDGE SIPPEL: All right. By saying that, let me
19 ask the question again. Assuming all of that happened that
20 way, the bales, I take it, were picked up by the D.E.A. at the
21 same -- at or before the time -- well, the bales were gone
22 from that area by the time the Mexican group had been
23 arrested. Is that correct?

24 WITNESS: Correct.

25 JUDGE SIPPEL: That was late 1989.

1 WITNESS: Correct.

2 JUDGE SIPPEL: Why did it take so long for this
3 marijuana to sprout up between the end of 1989 and it would be
4 sometime in June of 1991 by your estimate?

5 WITNESS: There wasn't no water. We're not like
6 here. I mean, if we get -- we don't get that much rain. You
7 can't grow anything there except native cactus and things like
8 that that require very little water. You can't grow a crop of
9 carrots --

10 JUDGE SIPPEL: Oh, this is just sitting there
11 dormant?

12 WITNESS: Dormant, exactly.

13 JUDGE SIPPEL: So there could be -- on your
14 property, there could be --

15 WITNESS: There could be more.

16 JUDGE SIPPEL: On your former property, there could
17 be all kinds of dormant seeds and if there was a miraculous
18 rainfall sometime --

19 WITNESS: You could sprout up again.

20 JUDGE SIPPEL: -- up it would come. Is that your
21 testimony?

22 WITNESS: Exactly.

23 JUDGE SIPPEL: That's all I have. Mr. Zauner?

24 MR. ZAUNER: I have no questions.

25 JUDGE SIPPEL: No questions?

1 MR. McCARTIN: No questions, Your Honor.
2 JUDGE SIPPEL: Anything else?
3 MR. McCARTIN: None, Your Honor.
4 JUDGE SIPPEL: All right. That's it. It's 4:30.
5 Do you want to keep this witness under oath? Do you
6 anticipate recalling him for anything?
7 MR. McCARTIN: No, Your Honor. I don't.
8 JUDGE SIPPEL: Then you're excused as a witness, Mr.
9 Richards.
10 WITNESS: Thank you.
11 JUDGE SIPPEL: We'll be proceeding -- you may return
12 to this proceeding any time you want. That's up to you and
13 your Counsel. But you're finished as far as asking questions.
14 WITNESS: Are we coming back tomorrow?
15 JUDGE SIPPEL: No, we're not coming back tomorrow.
16 We're going to have to wait until we hear from your attorneys
17 as to how they're going to handle that. Now, I do want to,
18 however, before we pack up here -- very briefly, I'm going to
19 say two things. Under Rule 1003 of the Federal Rules of
20 Evidence, which permits duplicates -- admissibility of
21 duplicates unless there's a genuine question of authenticity
22 or the use of the duplicate would be unfair and I don't find
23 that there's any genuine issue on authenticity or that their
24 use of the duplicates would be unfair. I am going to receive
25 into evidence at this time the Bureau's Exhibits Seven and

1 Eight.

2 (Whereupon, the documents referred
3 to as Bureau Exhibit Nos. Seven and
4 Eight were received into evidence.)

5 JUDGE SIPPEL: However, I'm receiving them on the
6 same condition as the condition I set with respect to Exhibit
7 Six. That is since these are the first time you've seen
8 these, Mr. McCartin, if you have a basis -- in respect, it
9 would be a motion to strike for some reason that you're able
10 to determine between now and the next time we meet and I do
11 understand that this is short notice to you, but I want to
12 leave this record as close -- as clear as I can rather before
13 we adjourn today.

14 The other thing I want to require -- I'm going to
15 require is that by 10:00 Friday morning, I want at least a
16 telephone status report from one of the Counsel in terms of
17 where -- when the next hearing date's going to be. I mean, if
18 you don't know by then, I want to know that you don't know.
19 And certainly, if you know -- if you determine something
20 earlier, please let me know.

21 Ultimately, there's going to have to be a motion
22 filed for the continuance with a specific date. But right
23 now, we'll handle it informally by phone. Counsel has been
24 very -- very much attune to keeping on schedule in this case
25 in an informal way. I think you've done excellent work in

1 terms of cooperating, so I don't see any need to do anything
2 more than just put this on the record. Does anybody have
3 anything more?

4 MR. McCARTIN: Nothing, Your Honor.

5 JUDGE SIPPEL: We're in recess -- it's 25 minutes to
6 five. We're in recess until my further call. Thank you.

7 (Whereupon, at 4:35 p.m. on Tuesday, December 7,
8 1993, the hearing adjourned.)
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CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

IN RE APPLICATION OF RICHARD RICHARDS

Name

MM DOCKET NO. 93-176

Docket No.

WASHINGTON, D.C.

Place

DECEMBER 7, 1993

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 167, inclusive, are the true, accurate and complete transcript prepared from the reporting by MARYKAE FLEISHMAN in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

December 17, 1993

Date

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